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Legal Representatives for Complainant

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2002 63216

JOHN THOMAS CARDOZA
1732 Moranda Drive #1
Sunnyvale CA 94087

A C C U S A T I O N

Physical Therapist Assistant License No.
AT 3120

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about September 10, 1993, the Physical Therapy Board of California issued Physical Therapist Assistant License Number AT3120 to John Thomas Cardoza (Respondent). The Physical Therapist Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2005, unless renewed.

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3. This Accusation is brought before the Physical Therapy Board of

4. Section 2609 of the Code states:

5. Section 2655 of the Code states:

“(b) “Physical therapist assistant” means a person who meets the qualifications

6. Section 2660 of the Code states:

d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

7. Section 2239 of the Code states:

(a) The use or prescribing for or administering to himself or herself, of any

1 controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of
2 alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the
3 licensee, or to any other person or to the public, or to the extent that such use impairs the ability
4 of the licensee to practice medicine safely or more than one misdemeanor or any felony involving
5 the use, consumption, or self-administration of any of the substances referred to in this section, or
6 any combination thereof, constitutes unprofessional conduct. The record of the conviction is
7 conclusive evidence of such unprofessional conduct.

8 (b) A plea or verdict of guilty or a conviction following a plea of nolo
9 contendere is deemed to be a conviction within the meaning of this section.

10 8. Section 2661 of the Code states:

11 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
12 made to a charge of a felony or any offense which substantially relates to the
13 qualifications, functions, or duties of a physical therapist is deemed to be a conviction
14 within the meaning of this article.”

15 9. Section 492 of the Code states:

16 “Notwithstanding any other provision of law, successful completion of any
17 diversion program under the Penal Code, or successful completion of an alcohol and drug
18 problem assessment program under Article 5 (commencing with section 23249.50) of
19 Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established
20 under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any
21 initiative act referred to in that division, from taking disciplinary action against a licensee
22 or from denying a license for professional misconduct, notwithstanding that evidence of
23 that misconduct may be recorded in a record pertaining to an arrest.

24 “This section shall not be construed to apply to any drug diversion program
25 operated by any agency established under Division 2 (commencing with Section 500) of
26 this code, or any initiative act referred to in that division.”

27 COST RECOVERY

28 10. Section 2661.5 of the Code states:

1 (a) In any order issued in resolution of a disciplinary proceeding before
2 the board, the board may request the administrative law judge to direct any
3 licensee found guilty of unprofessional conduct to pay to the board a sum not to
4 exceed the actual and reasonable costs of the investigation and prosecution of the
5 case.

6 (b) The costs to be assessed shall be fixed by the administrative law judge
7 and shall not in any event be increased by the board. When the board does not
8 adopt a proposed decision and remands the case to an administrative law judge,
9 the administrative law judge shall not increase the amount of the assessed costs
10 specified in the proposed decision.

11 FIRST CAUSE FOR DISCIPLINE

12 (Unprofessional conduct; Possession and Use of controlled substance)

13 11. Respondent is subject to disciplinary action under sections 2660(i), 2239
14 [misuse of controlled substances; unprofessional conduct] and 2661[guilty plea] in that he was in
15 possession of, and used/was under the influence of methamphetamine, a controlled substance.
16 The circumstances are as follows:

17 12. On or about September 20, 2002, a criminal complaint titled *People of the*
18 *State of California vs. John Thomas Cardoza*, case no. CC261985, was filed against respondent
19 in Superior Court, Santa Clara County, San Jose Facility. Count 1 charged respondent with a
20 violation of Health & Safety code sections 11377(a), a misdemeanor, possession of a controlled
21 substance (methamphetamine). Count 2 charged respondent with a violation of Health & Safety
22 code section 11550(a), using or being under the influence of a controlled substance
23 (methamphetamine.)

24 13. On or about November 1, 2002, respondent entered a plea of guilty to
25 Counts 1 and 2 before Judge Susan Bernardini. The Court accepted the plea, found a factual
26 basis for the charges, and granted deferred entry of judgment (DEJ). The details of the arrest are
27 as follows:

28 A. On or about September 7, 2002, San Jose Police Officer Bruce Unger was

1 on patrol at approximately 1855 hours. He was working in full uniform in a marked police
2 vehicle. On Phelan Avenue near 7th Street, he saw a female standing at the driver's door of a
3 silver Honda talking to a male seated in the driver's seat. Officer Unger recognized the female
4 from prior contact as an individual involved in drug and prostitution activity. He stopped his
5 vehicle about fifty yards away from the Honda and watched the two individuals for about twenty
6 seconds. During this time, he saw the two exchange something hand to hand. The female then
7 walked to a waiting vehicle, got in the passenger seat, and the vehicle drove away. The driver of
8 the Honda began driving on Phelan Avenue and turned south on 7th Street. Based on Officer
9 Unger's training and experience, he believed the two parties had conducted a narcotics
10 transaction. He began following the Honda southbound on 7th Street to Tully, then westbound
11 on Tully to Monterey. The driver was driving at the speed limit, and using turn signals when
12 appropriate.

13 B. The Honda made an abrupt lane change, and Officer Unger positioned his
14 vehicle behind the Honda and activated the emergency lights. The driver did not immediately
15 pull over even though there was sufficient and safe means to stop. As he reached Little Orchard
16 Street, the driver put his left arm out the window and pointed to the right. Officer Unger
17 motioned with his hand to pull to the right. The driver did not immediately do so. He increased
18 his speed to 45 miles per hour, and failed to yield even though he had sufficient room to stop. As
19 the driver reached Stouffer Boulevard, he made an abrupt turn and stopped, travelling 7/10ths of
20 a mile before stopping.

21 C. Officer Unger got out of his vehicle and conducted a high risk stop at
22 gunpoint. He ordered the driver, who was identified as respondent by his driver's license, out of
23 the vehicle. As assisting units arrived, Officer Unger directed the officers to search the street for
24 contraband where respondent had traveled. A plastic wrapper containing a white crystalline
25 substance was recovered on Little Orchard Street about fifty yards from Stouffer Boulevard. The
26 substance tested presumptively positive for methamphetamine.

27 D. Officers Ramar and Morales responded to Stouffer Road and Little
28 Orchard Road to assist Sergeant Unger. The Officers took respondent into custody for evading

an officer. Officer Ramar observed the respondent was nervous, sweating, his pupils were non-reactive and constricted, he had an elevated pulse (124 beats per minute), and was unable to stay still. Based on Officer Ramar's training and experience, in his opinion, it appeared that respondent was under the influence of a controlled substance. Officers Ramar and Morales transported respondent to San Jose Police Department. Officer Ramar collected a urine sample from respondent, which tested positive for methamphetamine. Officer Ramar read respondent his Miranda rights. Respondent stated he understood, and he agreed to cooperate and gave a statement. Respondent stated that he was talking to the woman at Phelan and 7th Street about acquiring sex from her. She leaned into his car and dropped a small white baggie in the front passenger seat. He did not pay her for it. He said that the baggie contained possibly "meth" or "coke." He left the location and headed south on 7th, then west on Tully. When he saw the police car behind him, he got scared. He thought he was in trouble for soliciting a prostitute, so he was afraid to pull over. He continued driving, went northbound on Little Orchard, and threw the baggie out the window. He thought once he threw the baggie out, it would be safe to pull over and he did so. Respondent stated that he knew the woman was a possible drug dealer and her boyfriend was in a gang. He was afraid for his family and needed to protect them. He did not want the gang members to go to his house. Respondent stated that he was an occasional user of "meth"; used it about once a week, and last used "meth" on Monday, September 2, 2002 or Tuesday, September 3, 2002. Officers Morales and Ramar then transported respondent to Santa Clara County Jail where he was booked for possession of a controlled substance, being under the influence of a controlled substance, and evading a police officer.

14. Respondent's license is subject to discipline in that he was in possession of, and tested positive for methamphetamine, a controlled substance, in violation of code sections 2660(i) [violation of Medical Practice Act], 2239 [unprofessional conduct], 2661 [guilty plea], and 492.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a

1 decision:

2 1. Revoking or suspending Physical Therapist Assistant License Number AT
3 3120, issued to John Thomas Cardoza;

4 2. Ordering John Thomas Cardoza to pay the Physical Therapy Board of
5 California the reasonable costs of the investigation and enforcement of this case, pursuant to
6 Business and Professions Code section 2661.5;

7 3. Taking such other and further action as deemed necessary and proper.

8 DATED: February 17, 2004 .

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11 Original Signed By:
12 STEVEN K. HARTZELL
13 Executive Officer
14 Physical Therapy Board of California
15 Department of Consumer Affairs
16 State of California
17 Complainant

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